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10/752,392	01/06/2004	Aaron P. Lauri	PAL-100-A	3572

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EXAMINER

JOHNSON, JERROLD D

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/752,392

Applicant(s)

LAURI, AARON P.

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-11 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Applicant's election without traverse of Invention 1, claims 1-10 and Species 1, Figs. 1-4 in the reply filed on 07 November 2006 is acknowledged.

Claims 3 and 11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention/Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07 November 2006.

It is noted that U-shaped outer peripheral wall of claim 3 is drawn to subject matter shown in Figs. 5-9, and is thus also non-elected.

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Typically, unless the references have been cited by the examiner on form PTO-892, they have not been considered. However, in this instance the Examiner has considered each reference.

None of the references were relevant to the examination of the claims.

Specification

The disclosure is objected to because of the following informalities: There appears to be some typos in the spec. See for instance "Paten" in paragraph [0040].

The specification should be proofread. Appropriate correction is required.

Additionally, there are some problems with terminology in the specification. Element 42 is not a "slot" as is set forth, but is in fact a groove. A slot suggests an opening that extends through an element, but the structure 42 does not extend through the housing, it is merely recessed into the housing in a manner consistent with a groove.

Additionally, the spec sets forth a positional orientation of the blade holder by virtue of the use of "upper end wall", "lower end wall", etc., but does not maintain this orientation throughout. For example, in paragraph [0026] the sidewalls are said to project "upwardly" when in fact they probably are best described as projecting "forwardly."

The specification should be proofread so as to present a description of the invention that is easily understood, and which is consistent with the common usage of the terms used therein.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,2 and 4-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There are numerous problems with the claims, including the inclusion of minor informalities, as well as the inclusion of language that is indefinite.

For instance, claim 1, line 2, there should not be a comma after "housing." (minor informality)

Claim 1, line 4, there is no antecedent basis for "lower end wall." (minor informality)

The use of the expression "slot" is inconsistent with common usage as is set forth above. (indefinite)

Additionally, the structure set forth in the claim 1 is very confusing. The description of the channel "opening outwardly along the front side" is confusing as it is unclear how a channel could open "along" a front side. The location of the "slot" is also confusing, as it appears that the slot (groove, actually) is disposed "behind" the lower end wall 43, not "across" the lower end wall. Perhaps the best language would be "a groove disposed in the lower wall at a position behind the lower end wall and extending across the length of the lower end wall." In any event, the current recitation does not in

Art Unit: 3728

a definitive manner convey to the reader where in the housing the "slot" is disposed.

(indefinite)

Claim 8 is confusing. (indefinite)

These are examples of the problems in the claims and all are in claim 1. A thorough re-writing of the claims is in order so as to provide the reader an easy understanding of what the positional relationship of the claim elements actually are.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 8, as understood (see the above 112 rejection), 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ferrandez FR 2460643.

Re claim 1, Ferrandez discloses the housing (Figs. 1-3) having a front side 7, upper wall (top of the housing), lower wall 2, the housing defining a channel opening outwardly along the front side, a "slot" (opening 8 through the front side 7) extending across the lower end wall (the bottom of the front side 7), magnets 9,10.

Re claim 8, the front side 7 comprises a lower substantially planar portion, the aforementioned lower end wall (the bottom of the front side 7), and a curvilinear upper portion (the "curvilinear" upper portion of the front side 7 that defines the curved edge of the opening 8). The curvilinear upper portion extends from a terminus of the lower portion and the upper wall defines a fulcrum to the extent that this curvilinear upper portion is inherently capable of functioning as a fulcrum.

Re claim 9, the magnets are disposed in sockets.

Re claim 10, the cut-out portion (defined by the opening 8) performs this function.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrandez FR 2460643 in view of Examiner Official Notice.

Ferrandez FR 2460643 does not disclose a housing with integrally formed walls, but Ferrandez, does in fact disclose the walls that define the channel.

The Examiner takes Official Notice of the fact that it is notoriously well known in the packaging art that plastic packages are both manufactured as multiple elements that are assembled subsequent to their formation (typically through molding) or are formed as a single unit (also typically through molding). Cost is the determining factor in the determination of the manufacturing technique.

Accordingly, it would have been obvious to one of ordinary skill to form the walls of Ferrandez integrally with each other as opposed to forming them separately (as is shown) so as to decrease manufacturing costs associated with assembling the separately formed parts.

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrandez FR 2460643 in view of one of Mutai et al. US 6,824,028, Kershner US 6,457,252 or Potter US 5,025,966 and further in view of Examiner Official Notice.

Ferrandez discloses a strap 12 for the purpose of securing the magnetic razor blade holder on a user (wall paper hanger) of the device.

Ferrandez does not disclose the use of a keeper comprising a second housing and at least one magnet being attractable to the magnet of the first housing.

The use of attractable magnets (one on a tool/tool holder the other on a keeper) to secure tools/tool holders to a worker is notoriously well known and all three of Mutai, Kershner and Potter teach this well known concept. Attractable magnets are known to allow for tools/tool holders to be secured to a user while providing the user quick access to the tools/tool holders and each of these references teach this benefit.

Accordingly, it would have been obvious to one of ordinary skill in the art to modify the holder of Ferrandez that has a strap for securing the holder to a user with a keeper magnet arrangement as is taught by any one of Mutai, Kershner and Potter so as to secure the holder on the user in a more stabile manner.

Re the number of magnets used in the keeper/holder, it is notoriously well known that the number of magnets used for an application such as this depends on the size of the magnets and the magnetic strength of the magnets. Accordingly it would have been obvious to use two or more magnets if necessitated.

Re claims 6 and 7, neodymium is well known as the magnetic material used in this type of application. Accordingly, because of the known suitability of this material

Art Unit: 3728

for this type of application as is evidenced by its well recognized use, it would have been obvious to one of ordinary skill in the art to choose this magnetic material for the magnets used in the holder and keeper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


J.D.J.


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